IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	ATTY'S DKT: KO53
	)	
Tse-Hao KO	)	Conf. No. 4259
	)	
Appln. No.: 10/796,008	)	
	)	Washington, D.C.
Filed: March 10, 2004	)	
	)	January 18, 2007
For: METHOD FOR MAKING CARBON...)		
	)	Attn: PETITIONS

PETITION TO VACATE HOLDING OF ABANDONMENT

Honorable Commissioner of Patents
Customer Service Window
Randolph Building, Mail Stop Amendment
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicant is in receipt of a Notice of Abandonment, mailed November 20, 2006, which **erroneously** states that the application is abandoned because of applicant's failure to file a response within the time period established by the Notice of Non-Compliant mailed March 29, 2006.

It is respectfully requested that such Notice of Abandonment be vacated as being erroneous and that the present application be reinstated.

THE FACTS

Applicant timely and properly responded within the time period established by the Office Action dated by timely filing a Response on April 5, 2006. However, said response contained the wrong application number and filing date. The

title, inventor name, confirmation number, attorney's docket number, art unit and examiner were all correctly identified.

It is noted that this error in application number and filing date also occurred in the Applicant's September 7, 2005, Response to the Restriction Requirement of July 12, 2005. As a Notice of Non-Complaint Amendment was issued on March 29, 2006, in regard to said Response, it is evident that the response was properly matched with the file even though there was an error in the application number and filing date.

After investigation, it appears that the initial error in application number and filing date was made by the secretary preparing the amendment of March 29, 2006. The erroneous data was from another case that was on her desk at that time. It was an unfortunate case of excusable human error. The error was carried over to the Response of April 5, 2006, as it is a common practice to copy the data from the top of the previous response when filing another paper in the PTO. This error has now been corrected.

As evidence that the Response of April 5, 2006, was timely and properly filed, attached hereto is a xerographic copy of the return postcard date-stamped by the PTO Mail Room as having been timely received by the PTO on April 5, 2006. However, it should be noted that the error with regard to the application number was also on the postcard.

As it appears that the Response was never properly matched to the file, attached hereto please find a duplicate copy of the Response dated April 5, 2006. The erroneous application number and filing date have been corrected by the interlineation by hand to to avoid further confusion. The interlineation only appears on the attached copy, not the original.

REMARKS

In view of the above evidence, it is clear that a reply was timely filed within the time period established by the Notice of Non-Compliant Amendment mailed on March 29, 2006.

As MPEP 502 states:

> … A minor error in the identification of the application can be corrected by the Office provided the correct identification can be discovered. Examples of minor errors are transposed numbers, typographical errors, and listing the parent application.

MPEP 502 further states:

> It would be of great assistance to the Office if all incoming papers pertaining to a filed application carried the following items:
>
> (A) Application number (checked for accuracy, including series code and serial no.).
>
> (B) Art Unit number (copied from most recent Office communication).

(C) Filing date.

(D) Name of the examiner who prepared the most recent Office action.

(E) Title of invention.

(F) Confirmation number (see MPEP § 503).

As indicated above, the wrong application number and filing date were accidentally used on the reply. However, the art unit number, name of the examiner, name of the inventor, title and confirmation number were all correct. Thus, the error in the application number should have been obvious and easily correctible as per the first above-quoted portion of MPEP 502.

Based on the above, it is evident that every intention was to file the application with the proper identifying information and the reply was timely filed.

With regard to confirmation of the date of the submission, the postcard by itself should be sufficient, as MPEP Section 503 states:

> A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt of the PTO of all items listed there on the date stamped thereon by the PTO.

It accordingly requested that the Notice of Abandonment be vacated and the present application be reinstated. If a fee must be charged, please charge same to

Deposit Account No. 02-4035, and then refund said fee as the holding of abandonment is erroneous and, in substantial respects, is the fault of the PTO.

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: KO=53

In re Application of:	)	Confirmation No.: 4259
Tse-Hao KO	)	Art Unit: 1771
Appln. No.: ~~11/188,799~~ 10/796,008	)	Examiner: A. T. Piziali
Filed: ~~March 1, 2004~~ March 10, 2004	)	April 5, 2006
For: METHOD FOR CARBON MAKING FABRIC...	)	

REPLY TO "NOTICE OF NON-COMPLIANT AMENDMENT"

Customer Service Window, Mail Stop Amendment
Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Randolph Building
401 Dulany Street
Alexandria, Virginia 22314

Sir:

Replying to the "Notice of Non-Compliant Amendment" mailed March 29, 2006, applicant hereby re-presents below the Amendment of September 7, 2005, with the non-elected claims being designated as "Withdrawn" as required.

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper.

Remarks/Arguments begin on page 6 of this paper.

Amendments to the Claims

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

1. (Original and Withdrawn) A method for making a carbon fabric comprising the steps of:

(a) preparing a raw fabric obtained from raw fibers by weaving; and

(b) carbonizing said raw fabric into a carbon fabric;

wherein the raw fibers for the raw fabric are oxidized fibers of polypropylene having a carbon content of 50 wt% at least, an oxygen content of 4 wt% at least, and a limiting oxygen index (LOI) of 35% at least.

2. (Original and Withdrawn) The method as claimed in claim 1, wherein the carbon content of said raw fibers is over 55wt%.

3. (Original and Withdrawn) The method as claimed in claim1, wherein the oxygen content of said raw fabrics is over 8wt%.

4. (Original and Withdrawn) The method as claimed in claim 1, wherein the oxygen limiting index of said raw fibers is over 50%.

5. (Original and Withdrawn) The method as claimed in claim 1, wherein said step (b) carbonizing said raw fabric into a carbon fabric is performed at 700-2500°C.

6. (Original and Withdrawn) The method as claimed in claim 5, wherein said step (b) is performed at 900-2500°C.

7. (Original and Withdrawn) The method as claimed in claim 1, wherein said step (b) carbonizing said raw fabric into a carbon fabric is performed in at least one high temperature oven under the presence of an inert gas.

8. (Original and Withdrawn) The method as claimed in claim 7, wherein said step (b) is performed in a plurality of said high temperature ovens connected in series.

9. (Original and Withdrawn) The method as claimed in claim 7, wherein said inert gas is helium.

10. (Original and Withdrawn) The method as claimed in claim 1, wherein said step (b) carbonizing said raw fabric into a carbon fabric is performed at a predetermined constant temperature.

11. (Original and Withdrawn) The method as claimed in claim 1, wherein said step (b) carbonizing said raw fabric into a carbon fabric is performed continuously at different temperatures.

12. (Original and Withdrawn) The method as claimed in claim 1, wherein said step (b) carbonizing said raw fabric into a carbon fabric is performed interruptedly at different temperatures.

13. (Original and Withdrawn) The method as claimed in claim 1, wherein said step (b) carbonizing said raw fabric into a carbon fabric is performed for 2-240 minutes.

14. (Original and Withdrawn) The method as claimed in claim 13, wherein said step (b) is performed for 10-100 minutes.

15. (Original and Withdrawn) The method as claimed in claim 1, wherein a shrinkage of said raw fabric during said step (b) is below 30%.

16. (Original) A carbon fabric formed of oxidized fibers of polypropylene, having a density over 1.68 g/ml and a magnetic wave shielding efficiency over 30dB subject to a magnetic wave having a frequency ranging from 300 MHz to 2.45 GHz.

17. (Original) The carbon fabric as claimed in claim 16, wherein said oxidized fibers of polypropylene have a carbon content of 50wt% at least, an oxygen content of 4wt% at least, and a limiting oxygen index of 35% at least.

18. (Original) The carbon fabric as claimed in claim 16, having a carbon content over 70 wt%.

19. (New) A carbon fabric made according to the method of claim 1, the raw fibers of said raw fabric comprising oxidized fibers of polypropylene, said carbon fabric having a density over 1.68 g/ml and a magnetic wave shielding efficiency over 30 dB subject to a magnetic wave having a frequency ranging from 300 mHz to 2.45 gHz.

20. (New and Withdrawn) The method according to claim 1 wherein the resultant fabric has a density over 1.68 g/ml and a magnetic wave shielding efficiency over 30 dB subject to a magnetic wave having a frequency ranging from 300 mHz to 2.45 gHz.

REMARKS

The Remarks of the Reply filed September 7, 2005, are respectfully repeated by reference, including applicants' traversal of the restriction requirement for the reasons set forth therein, and also bearing in mind the two new linking claims 19 and 20.

As regards the Notice of Non-Compliant Amendment, undersigned has learned that the designation "Withdrawn" does not really mean "Withdrawn", but instead means not elected. This is stated on an FAQ which is on the PTO website. We have been informed by the PTO Office of Patent Legal Administration as follows:

> In the rule making that revised amendment practice, the status identifier "withdrawn" was identified as being for a claim still in the application, but in a non-elected status. *See Changes to Implement Electronic Maintenance of Official Patent Application Records*, 68 *Fed. Reg.* 38611, 38616 (June 30, 2003). The use of the status identifier "withdrawn" does not mean that an applicant is making an election without traverse. It is merely an indication that the claim is directed to a non-elected invention. Furthermore, the examiner can still rejoin withdrawn claims when appropriate.

Undersigned, on behalf of applicant, respectfully objects to the aforementioned PTO practice, as the designation of claims as "withdrawn" could be improperly interpreted as the applicant consenting to a withdrawal of any claim so designated, which is certainly not the case when an applicant traverses the requirement.

Considering the plain meaning of the word "withdrawn", the PTO should be cognizant that claims are not actually "withdrawn" until and unless the examiner repeats and

makes final the restriction requirement. Certainly, there are times when a traversal of a restriction requirement is convincing and the restriction requirement is withdrawn. By the PTO interpretation of the rule, i.e. 37 CFR 1.142(b), the claims will have been already marked "withdrawn" when the restriction requirement is withdrawn, thereby reinstating the non-elected claims.

Designating the claims as "withdrawn" also tends to prejudge any further consideration by the examiner of the requirement which has been traversed. Moreover, the mere designation "withdrawn" is likely to cause many examiners to simply ignore the claims.

Accordingly, applicant's required designation of the claims as "withdrawn" is not to be taken as any acquiescence by applicant that such claims are actually withdrawn until and unless the requirement has been repeated and made final, and then only subject to applicant's right to petition.

Respectfully submitted,

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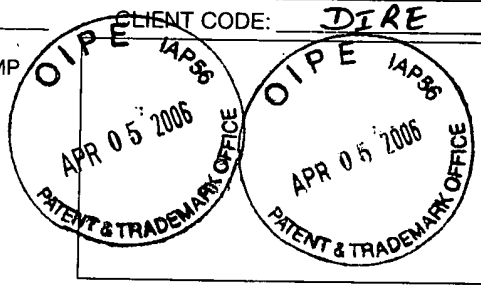
APPLICATION/PATENT NO: 11/188,799 CONF. NO.: 4259

DOCKET NO: KO=53 CLIENT CODE: DIRE



THE PATENT AND TRADEMARK OFFICE STAMP HEREON ACKNOWLEDGES RECEIPT OF THE FOLLOWING PAPERS:

- ☐ FEES $ _____ PTO FORM 2038
- ☐ EXTENSION OF TIME (_____MONTHS)
- ☐ TRANSMITTAL LETTER
- ☐ MISSING PARTS RESPONSE WITH DECL
- ☐ AMENDMENT/RESPONSE (circle one)
  - ☐ PRELIMINARY ☐ SUPPLEMENTAL
- ☐ APPLICATION DATA SHEET
- ☐ RESTRICTION/ELECTION REPLY
- ☐ SEQUENCE LISTING ☐ WITH DISK
- ☐ RCE TRANSMITTAL
- ☐ REQUEST FOR STATUS
- ☐ NOTICE OF APPEAL
- ☐ APPEAL BRIEF/REPLY BRIEF (TRIPLICATE)
- ☐ REQUEST & CERTIFICATE OF CORRECTION
- ☐ ASSIGNMENT
- ☐ INFORMATION DISCLOSURE STATEMENT
  - ☐ FORM SB08A & _____ PATENTS/PUBS
- ☐ PRIORITY DOCUMENT(S) NO. _____
- ☐ DECLARATION UNDER § _____
- ☐ _____SHEETS OF FORMAL DRAWINGS
- ☐ ISSUE FEE TRANSMITTAL FORM
  - ☐ PUBLICATION FEE
- ☐ MAINTENANCE FEE LETTER
- ☑ OTHER Reply to "Notice of Non-Compliant Amendment"

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